IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.1155 OF 2003
IN
SUMMARY SUIT NO.3685 OF 2003

Bina Wd./o. Late Kirti Kumar Shah .. Plaintiff

Vs.

Dungarshi Raishi Chheda .. Defendant

Ms.Neeta Solanki i/b Kiran Jain and Co. for the plaintiff

Mr.Chetan Kapadia i/b Harakhchand and Co. for the defendant

CORAM : S.U.KAMDAR, J

DATED : 23RD AUGUST, 2005

P.C.:

1. The present suit is filed on promissory note for sum of Rs.1.0 lac. The notice was issued on 12.9.03 demanding the payment of the said amount covered under the promissory note. There was no reply from the defendant and accordingly the present suit was filed.

2. The defence raised by the defendant is that the promissory note was executed in blank for

another transaction which is for sale of the property. It is his case that the plaintiff and his wife, defendant and his wife were co-owners of the said property and to secure the payment of the amount from sale proceeds of the said property to the extent of plaintiffs share that the aforesaid promissory note was executed. He has further contended that the amount received towards sale proceeds of the said property as per the agreement of sale is paid and thus, promissory notice ought to have been returned but the plaintiff represented that the said promissory note were lost and therefore, could not be returned back. It is his case that the claim of money lent and advanced as friendly loan under the the said promissory note is therefore false and the defendants should be given an unconditional leave to defend. He has further contended that legal presumption of consideration in respect of negotiable instrument is rebuttable presumption and on his statement being made on oath that he has not received the money the said presumption has been rebutted. In support of his aforesaid contention he relies upon the judgment of the apex court in the case of Kundan Lal Rallaram

V.Custodian, Evacuee Property, Bombay reported in AIR 1961 Supreme Court 1316 (V 48 C 241) and contends that in view thereof he is entitled to an unconditional leave to defend.

3. In my opinion, the defence raised by the defendants in respect of the promissory note is thoroughly bogus and frivolous. Admittedly promissory note has been executed. If it was for the purpose of securing repayment in respect of sale of the Dadar property there would have been some writing indicating that promissory notes are given for such a security and the same to be cancelled and/or returned on receipt of the aforesaid payment of Dadar property. Apart therefrom even if the plaintiff had represented to the defendants that the said promissory note was lost noting prevented the defendants from obtaining in writing the aforesaid fact before making payment in respect of the so called share of the Dadar property. Admittedly, no such document has been obtained by the defendant. Thus, it is not possible to accept the defence of the defendant merely on the bare statement that the promissory

note was executed for the aforesaid purpose. The contention that the presumption is rebuttal is undoubtedly true but such rebuttal has to be based on some concrete evidence and not mere bare statement of the defendants. In view of the aforesaid, I have to proceed on the footing that there is a valid consideration in respect of promissory note because there is a statutory presumption in respect thereof. In the aforesaid circumstances, I direct the defendant to deposit a sum of Rs. 1 lac within 4 weeks failing which plaintiff will be entitled to decree.

4. If the said amount is deposited the Prothonotary and Senior Master is directed to invest the same in any Nationalised Bank in Fixed Deposit initially for a period of 1 year and then renew the same from time to time till further orders of this court.If the amount is so deposited then the suit is transferred to the list of Commercial Causes. Written Statement or points of defence to be filed within four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four

weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.